


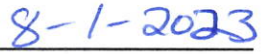




### Seattle Directors Rule 5-007 Penalties

Department:  <b>Office of City Finance</b>	Rule No: 5-007	Supersedes: 5-007
	Publication: June 28, 2023	Effective: Aug. 1, 2023
Subject: Penalties	Code and Section Reference(s): SMC 5.30 SMC 5.55	
Approved:		
 Division Director, Joseph Cunha	 Date	
 Jamie Carnell, Office of City Finance, Interim Director	 Date	

**1. Purpose**

Seattle Director’s Rule 5-007 provides information for taxpayers concerning penalties.

**2. Rule**

Seattle Director’s Rule 5-007 provides information for taxpayers concerning penalties that apply as a result of:

1. late payment of a return
2. engaging in business without a business license tax certificate
3. substantially underpaying business license taxes
4. the Director’s issuance of a notice of violation or criminal complaint
5. the Director finding that a taxpayer disregarded specific written reporting instructions
6. the Director finding that a taxpayer intentionally evaded taxes due

Seattle Dir. Rule 5-007 also addresses

1. statutory restrictions on imposing penalties and
2. waiver or cancellations of penalties

Amendments to Seattle Dir. Rule 5-007 include

1. updating the format to clarify

a. penalty type

b. penalty cause and rate and

c. cross-reference to rule section/subsection

2. Seattle Dir. Rule 5-007 also made changes to ensure consistency with current 2023 penalty rates throughout the rule

**3. Definitions**

Seattle Dir Rule 5-007 adds no new definitions.

**Seattle Rule 5-007**

Penalties

Seattle Rule 5-007

Penalty Type	Penalty Cause and Rate			See sections of this rule listed below.
Late payment of a return -	Tax not paid by due date =	Tax not paid on or before the last day of the month following due date =	Tax not paid on or before the last day of the second month following due date =	2(a)
	9%	19%	29%	
Unregistered taxpayer -	The Director discovers a taxpayer who engages in business in the city but is not registered =			(3)
	5% of unpaid tax			
Substantially Underpaid Deficiency Assessment -	A notice of underpayment or tax assessment is issued by the Director and	the taxpayer has paid less than 80% and	the amount of underpayment is at least \$1,000.00.	(4)
	5%/15%/25% of unpaid tax			
Issuance of a Notice of Violation or Criminal Complaint -	10% of unpaid tax			(5)
Disregard of specific written instructions -	10% of unpaid tax			(6)
Evasion -	Tax is underpaid and there is an intentional effort to hide that fact			(7)
	50% of unpaid tax			

(1) Nonassessable and assessable penalties

Nonassessable penalties are penalties that the law imposes automatically when the facts giving rise to them occur. There is no right to contest the imposition of a nonassessable penalty. By contrast, penalties must be assessed by the Director within the statute of limitations for assessments and taxpayers have the right to contest the assessment in the same manner as any

other assessment, such as taxes. Penalties in (2) through (5) are nonassessable penalties.

Penalties in (6) and (7) are assessable penalties.

(2) Late payment of a return

(a) SMC 5.55.110 A imposes a 9% penalty if the tax due on a taxpayer's return is not paid by the due date. A 19% penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a 29% penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is \$5.00.

(b) Various sets of circumstances can affect how the late payment of a return penalty is applied. See (b)(i) and (ii) of this subsection for some of the most common circumstances.

(i) Will I avoid the penalty if I file my return without the payment? The Director may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. Failure to file the return can result in the issuance of a notice of underpayment (NOU) or an assessment for the actual, or an estimated, amount of unpaid tax. Any NOU or assessment issued will include a late payment penalty starting at 9%, which will increase the longer tax remains unpaid. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) I did not register and receive a business license tax certificate with the Director when I started my business, and now I think I was supposed to be paying taxes! What should I do? We encourage you to visit our website where you can find links that enable you to file your business license tax certificate application online. You may also fill out and send in a business license tax certificate application by U.S. mail. It is important for you to apply for and receive a business license tax certificate before the department identifies you as an unregistered taxpayer without a business license tax certificate and contacts you about your business activities. Except as noted below, if a person engages in taxable activities without a business license tax certificate, but then applies for and receives a business license tax certificate prior to being contacted by the department, the business license tax certificate registration is considered voluntary. If, within 30 days of voluntarily applying for their business license tax certificate application, a person

(A) files all required returns for the four years prior to the beginning of the calendar year in which the business license tax certificate application is made,

(B) pays all taxes and interest due, and

(C) receives a business license tax certificate,

the late payment of return penalty may not apply to those specific tax-reporting periods representing the time during which the person did not have a business license tax certificate.

(iii) However, even if the person has voluntarily applied for and received a business license tax certificate as explained above, the late payment of return penalty will apply if the person:

- (A) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or
- (B) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(iv) Even though circumstances, such as those listed in (2)(b)(iii) above, may warrant imposing the late payment of return penalty, a person who has voluntarily applied for and received a business license tax certificate will not be subject to the unregistered taxpayer penalty (see section (3) below).

### (3) Engaging in business without a business license tax certificate

SMC 5.55.110 D imposes a 5% penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily apply for and receive a business license tax certificate prior to being contacted by the Director. "Voluntarily apply for and receive a business license tax certificate" means to properly complete and submit a business license tax certificate application before any contact from the City of Seattle with respect to licensing or paying taxes.

### (4) Substantially underpaid deficiency assessment

- (a) SMC 5.55.110(B) adds a 5% deficiency penalty to an assessment if the Director determines that any tax has been "substantially underpaid," as defined below.
- (b) As used in this section, "substantially underpaid" means that the taxpayer has paid less than 80% of the amount of tax determined by the Director to be due for all taxes contained in SMC chapters 5.35, 5.38, 5.39, 5.40, 5.45, 5.48, 5.50, 5.52, and 5.53 included in, and for the entire period of time covered by, the Directors examination, and the amount of underpayment is at least \$1,000.00.
- (c) If payment of the tax amount due and the 5% deficiency penalty due is not received by the due date specified in the notice, or any extension thereof, the deficiency penalty shall be increased to 15% of the amount of the tax owing. If payment of the tax amount due and the 15% deficiency penalty due is not received on or before the 30<sup>th</sup> day following the due date specified in the notice of tax due, or any extension thereof, the penalty shall be increased to 25% of the amount of the tax due. No penalty added shall be less than \$5.00.

### (5) Issuance of a notice of violation or criminal complaint

If the Director issues a notice of violation or criminal complaint pursuant to SMC 5.55.110(C) for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of 10% of the amount of the tax due, but not less than \$10.00.

### (6) Disregard of specific written instructions

If the Director finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of 10% of the additional tax found due will be imposed because of the failure to follow the instructions pursuant to SMC 5.55.110(E).

- (a) A taxpayer is considered to have received specific written instructions when the Director has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in the imposition of this penalty. The specific written instructions may be given as a part of a NOU, tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the Director has not issued their final instructions or decision.
- (b) The penalty may not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

#### (7) Evasion

If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of 50% of the additional tax determined by the Director to be due will be added. The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The Director has the burden of showing the existence of an intent to evade tax liability through clear, cogent, and convincing evidence. The evasion penalty only applies to the specific taxes that a taxpayer intended to evade. To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid.

#### (8) Statutory restrictions on imposing penalties

Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

- (a) The penalties imposed for the late payment of a return, unregistered taxpayer without a business license tax certificate, substantial underpayment assessment, and issuance of a notice of violation or criminal complaint (see section (2) through (5) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax.

- (b) The Director may impose either the evasion penalty (section (7) of this rule) or the penalty for disregarding specific written instructions (section (6) of this rule) but may not impose both penalties on the same tax.

(9) Waiver or cancellation of penalties

SMC 5.55.120 authorizes the Director to waive or cancel penalties under limited circumstances.

(a) Circumstances beyond the control of the taxpayer

- (i) The Director may waive or cancel any penalty imposed under SMC 5.55.110 if the failure to pay the tax by the due date was the result of circumstances beyond the control of the taxpayer.
- (ii) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter.
- (iii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to timely file and pay.
- (iv) Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following:
  - (A) Erroneous written information given to the taxpayer by a department employee caused the delinquency.
  - (B) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver consideration.
  - (C) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
  - (D) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place.

(b) Oral statements or inaccurate tax advice will not support a penalty waiver

A penalty will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is

because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Further, reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(c) Waiver of the late payment of return penalty

The late payment of return penalty (see section (2) above) associated with the first 30 days after the due date may be waived either as a result of circumstances beyond the control of the taxpayer or after a 24-month review of the taxpayer's reporting history, as described below. Late payment penalties due when the payment is more than 30 days late after the due date will not be waived under the 24-month review.

- (i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty may still be waived if the taxpayer has timely filed and paid all tax returns and business license tax certificate renewals (regardless of type of tax or license) due for a period of 24 months immediately preceding the period covered by the return for which the waiver is being requested.
- (ii) A taxpayer who applies for and receives a business license tax certificate to engage in business with the department and engages in business activities for a period less than 24 months, is eligible for the waiver if the taxpayer had no delinquent tax returns for any periods prior to the period covered by the return for which the waiver is being requested.
- (iii) A return will be considered timely for purpose of the waiver if there is no tax liability for the period for which the return is filed.
- (iv) A 24-month review is only valid when considering waiver of the late payment of return penalty described in section (2) above, and for those payments made within the 30-day period after the due date. The 24-month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty described above.




DIRECTOR'S CERTIFICATION

I, Jamie Carnell, City of Seattle Interim City Finance Director, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Office of City Finance.

DATED this 1 day of August 2023.

CITY OF SEATTLE, a Washington municipality.

By: Jamie Carnell,  \_\_\_\_\_,

City of Seattle Interim City Finance Director

Effective date: August 1, 2023.

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STATE OF WASHINGTON -- KING COUNTY

--SS.

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418541

No.

CITY OF SEATTLE:FINANCE&ADMIN

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROPOSED RULE MAKING

was published on

06/28/23

The amount of the fee charged for the foregoing publication is the sum of \$186.75.



*Amber A. Barnes*

\_\_\_\_\_  
Subscribed and sworn to before me on  
06/28/2023  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication

# State of Washington, King County

## City of Seattle

City of Seattle

### NOTICE OF PROPOSED RULEMAKING HEARING AND OPPORTUNITY TO COMMENT

The City of Seattle Interim City Finance Director, acting under the authority of Seattle Municipal Code (SMC) Chapters 3.02 and 5.55, proposes the adoption or amendment of the following rules:

Seattle Rule 5-007, Penalties

Seattle Rule 5-133, Warranties and Maintenance Agreements

Seattle Rule 5-500, Computer Software

Seattle Rule 5-501, Computer Hardware

Seattle Rule 5-502, Taxation of Information Services and Computer-Related Services

Seattle Rule 5-503, Digital Products

Seattle Rule 5-990, Information Requests - Aggregation and Confidentiality

The rules may apply to one and/or several chapters of the City's Municipal Code, including but not limited to all chapters within SMC Title 5, Subtitle I - General Regulations and Title 5, Subtitle II - Taxes.

**PUBLIC HEARING AND COMMENT:**  
On **Tuesday, July 11, 2023**, from 10 a.m. to 11:30 a.m., the Office of City Finance will hold a public hearing to consider the proposed rules. The hearing will be hosted on WebEx Events.

Event address for attendees:

City of Seattle Director's Rules Hearing

Date and time:

Tuesday, July 11, 2023, 10:00 AM  
(UTC-07:00) Pacific Time (US & Canada)

Join link:

<https://seattle.webex.com/seattle/j.php?MTID=m4f923e18d9fab3caa70dd7650aacdccb>

Webinar number:

2483 022 0793

Webinar password:

pCxumZTj674 (72986985 from phones and video systems)

Join by phone

+1-206-207-1700 United States Toll  
(Seattle)

+1-408-418-9388 United States Toll

Access code: 248 302 20793

The Office of City Finance invites all interested persons to present data and provide comments or arguments pertaining to the proposed rules, either orally at the hearing or in writing at or before the hearing.

Please mail or deliver written comments to:

Office of City Finance

Attn: Kevin Guichon, Tax Policy Analyst

License and Tax Administration

700 Fifth Ave. - Suite 4250

P.O. Box 34214

Seattle, WA 98124-4214

Kevin.Guichon@seattle.gov

The public may inspect copies of the two new and five amended, proposed rules on our website at <http://www.seattle.gov/finance-and-administrative-services/directors-rules>. If you would like a copy of the proposed rules, please call (206) 233-3789, FAX (206) 684-5170, email: [tax@seattle.gov](mailto:tax@seattle.gov), or submit a written request to the License and Tax Administration offices, 700 Fifth Ave.,

Suite 4250, P.O. Box 34214, Seattle, WA  
98124-4214.

Jamie Carnell, Interim City Finance  
Director, Office of City Finance

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